

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

R. ALEXANDER ACOSTA,)	
SECRETARY OF LABOR, UNITED STATES)	CIVIL ACTION
DEPARTMENT OF LABOR,)	
)	
Plaintiff,)	CASE NO. 8:18-cv-464
)	
v.)	COMPLAINT – Labor
)	29 U.S.C. § 651, <u>et seq.</u>
NEBRASKA RAILCAR CLEANING SERVICES,)	
LLC, STEVEN M. BRAITHWAITE, and ADAM T.)	
BRAITHWAITE,)	
)	
Defendants.)	
)	

COMPLAINT

I

Plaintiff, R. Alexander Acosta, Secretary of Labor, United States Department of Labor (the “Secretary”), brings this action for injunctive and other relief pursuant to the provisions of § 11(c) of the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. § 651 et seq.), (“the Act”).

II

Jurisdiction of this action is conferred upon the Court by § 11(c)(2) of the Act (29 U.S.C. § 660(c)(2)).

III

(a) Defendants are Nebraska Railcar Cleaning Services, LLC, Steven M. Braithwaite, and Adam T. Braithwaite. For the time pertinent herein, Nebraska Railcar Cleaning Services, LLC, (“Nebraska Railcar”) was engaged in the business of cleaning residual commodity from rail tank cars from three locations in Omaha, Nebraska: The Nebraska Railcar site at 302 Pierce Street, the General Electric site at 120 Hickory Street, and the Greenbrier site in the 3100 block of South 30th Street.

(b) Nebraska Railcar is a privately-held Nebraska corporation with its principal office located at 115 Hickory Street, Omaha, Nebraska 68108, within the jurisdiction of this Court.

(c) Steven M. Braithwaite is President and an owner of Nebraska Railcar. He resides in Elkhorn, Nebraska, within the jurisdiction of this Court.

(d) Adam T. Braithwaite is Vice President of Operations and Marketing for Nebraska Railcar, and he has an ownership interest in the company. Adam Braithwaite resides in Omaha, Nebraska, within the jurisdiction of this Court.

IV

(a) Mr. Gaver was employed by Defendants from January 2015 through April 22, 2015. Mr. Gaver usually worked at Nebraska Railcar's Greenbrier location as a "scraper," which is a person who cleans the inside of railroad tank cars by entering the tank cars and scraping and shoveling residual product into buckets.

(b) At all times material herein, Mr. Gaver was an employee who was employed by an employer as defined by §§ 3(5) and 3(6) of the Act.

(c) On April 14, 2015, an explosion and flash fire occurred within a petroleum tank car being cleaned by two Nebraska Railcar employees at the 120 Hickory Street location. The two employees both died at the scene.

(d) On April 15, 2015, in front of other employees at the Greenbrier site, Mr. Gaver raised safety concerns to Adam Braithwaite. For example, Mr. Gaver expressed that he did not feel comfortable working inside a rail car without having a personal air monitor, but Adam Braithwaite said that personal air monitors were too expensive.

(e) Nebraska Railcar had some employees, including Mr. Gaver, return to work on April 21, 2015, the Tuesday following the explosion, for several days of meetings and training.

(f) During the meetings and training, Adam Braithwaite asked employees for suggestions on improving safety. Several times on April 21 and April 22, Mr. Gaver offered suggestions on improving safety and he also raised safety concerns and asked questions. Mr. Gaver was not argumentative and he did not raise his voice.

(g) After the training was over on April 22, Mr. Gaver received a telephone call from Kyle Dunlap, a Production Supervisor from Nebraska Railcar. Mr. Dunlap terminated Mr. Gaver, stating that he was being let go because he was disruptive and causing other employees to riot against Nebraska Railcar. Mr. Dunlap stated that the termination was done at Adam Braithwaite's request. Adam Braithwaite made the decision to terminate Mr. Gaver after discussing the issue with Steven Braithwaite.

V

(a) On April 22, 2015, Mr. Gaver lodged a formal complaint with the Secretary and alleged that Nebraska Railcar discriminated against him in violation of § 11(c)(1) of the Act, in that Nebraska Railcar terminated him for raising safety concerns.

(b) Before the expiration of 30 days after his termination, Mr. Gaver amended his § 11(c) complaint to name Steven Braithwaite and Adam Braithwaite as Respondents.

(c) The Secretary thereafter investigated Mr. Gaver's complaint in accordance with § 11(c)(2) of the Act.

VI

As a consequence of Mr. Gaver's voicing of safety concerns and his suggestions to improve safety, Nebraska Railcar, Steven Braithwaite, and Adam Braithwaite discriminated against Mr. Gaver by terminating him.

VII

By the acts described above, Nebraska Railcar, Steven Braithwaite, and Adam Braithwaite knowingly or maliciously discriminated and are continuing to discriminate against Mr. Gaver because of his exercise of rights under or related to the Act, and thereby engaged in, and are continuing to engage in, conduct in violation of § 11(c) of the Act.

WHEREFORE, cause having been shown, the Secretary prays for judgment against Defendants as follows:

(1) For an Order permanently enjoining and restraining Nebraska Railcar, Steven Braithwaite, Adam Braithwaite, and their officers, agents, servants, employees and those persons in active concert or participation with them, from violating the provisions of § 11(c)(1) of the

Act (29 U.S.C. § 660(c)(1)); and

(2) For all appropriate relief, including payment to Dale Clayton Gaver III for lost wages and benefits, including interest thereon; compensatory damages, including damages for emotional distress; and consequential damages, including attorney's fees; and

(3) For an Order requiring posting in a prominent place for 60 (sixty) consecutive days and compliance with a Notice stating Defendants will not in any manner discriminate against employees because of engagement, whether real or perceived, in activities protected by § 11(c) of the Act; and

(4) For an Order that Defendants pay the costs of this action, and granting such other and further relief as may be necessary and appropriate.

Respectfully submitted this 2nd day of October, 2018.

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